

SENATE BILL 3179

By Bell

AN ACT to amend Tennessee Code Annotated, Title 70,
relative to limiting the liability of persons engaging
in whitewater activities.

WHEREAS, the general assembly recognizes that persons who participate in whitewater activities may incur injuries as a result of the inherent risks involved in such activities; and

WHEREAS, the general assembly also finds that the state and its citizens derive numerous economic and personal benefits from these activities; and

WHEREAS, it is, therefore, the intent of the general assembly to encourage whitewater activities by limiting the civil liability of those involved in such activities; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 70, Chapter 7, is amended by adding the following sections as a new part thereto:

70-7-201. As used in this part, unless the context otherwise requires:

(1) "Engages in whitewater activity" means whitewater rafting;

(2) "Inherent risks of whitewater activities" means those dangers or conditions that are an integral part of whitewater activities, including but not limited to:

(A) Water;

(B) Rocks and obstructions;

(C) Cold water and weather; and

(D) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or other, such as failing to follow instructions or not acting within the participant's ability;

(3) "Participant" means any person who engages in a whitewater activity;

(4) "Whitewater" means rapidly moving water;

(5) "Whitewater activity" means navigation on rapidly moving water in a watercraft; and

(6) "Whitewater professional" means a person, corporation, LLC, partnership, natural person or any other entity engaged for compensation in whitewater activity.

70-7-202. Except as provided in § 70-7-203:

(1) A whitewater professional shall not be liable for an injury to or the death of a participant resulting from the inherent risks of whitewater activities; and

(2) No participant or participant's representative shall make any claim against, maintain an action against, or recover from a whitewater professional, or any other participant for injury, loss, damages, or death of the participant resulting from any of the inherent risks of whitewater activities.

70-7-203. Nothing in § 70-7-202 shall be construed to prevent or limit the liability of a whitewater professional, or any other person if the whitewater professional:

(1) Provided the equipment and knew or should have known that the equipment was faulty, and the equipment was faulty to the extent that it caused the injury;

(2) Owns, leases, rents, or otherwise is in the lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition that was known to the whitewater professional, or person and for which warning signs have not been conspicuously posted;

(3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and the act or omission caused the injury; or

(4) Intentionally injures the participant.

70-7-204.

(a) Every whitewater professional shall either post and maintain signs that contain the warning notice prescribed in subsection (b) or give the warning in writing to participants. The signs shall be placed in clearly visible locations on or near places where the whitewater professional conducts whitewater activities, if the places are owned, managed, or controlled by the professional.

(b) The warning notice specified in subsection (d) shall appear on the sign in black letters, with each letter to be a minimum of one inch (1") in height.

(c) Every written contract entered into by a whitewater professional for the purpose of providing professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves activities on or off the location or site of the whitewater professional's business, shall contain in clearly readable print the warning notice specified in subsection (d).

(d) The signs and contracts described in subsection (a) shall contain the following warning notice:

WARNING

Pursuant to Tennessee Code Annotated, Title 70, Chapter 7, Part 2, a whitewater professional is not liable for an injury to or the death of a participant in whitewater activities resulting from the inherent risks of whitewater activities.

70-7-205. Nothing in this part shall modify, constrict or prohibit the use of written waivers, exculpatory agreements or releases. This part is intended to provide additional

limitations of liability for whitewater professionals, whether or not such agreements are used.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.